

## **II. REMARKS**

### **Summary of the Amendments**

The present application still contains 25 claims.

Claims 1-13, 22-24, 26-28, 30, 32, 34, 36, 42 and 50-56 have been withdrawn.

Claims 14-21, 25, 29, 31, 33, 35, 37-41 and 43-49 remain as originally filed.

### **A. Response to Election/Restrictions**

In the Office Action, the Examiner indicates that although in the remarks section of the Applicant's previous Office Action response it was indicated that claims 1-13, 22-24, 26-28, 30, 32, 34, 36, 42 and 50-56 were cancelled, the claims were labeled as only being withdrawn in the listing of claims.

In response, the Applicant respectfully submits that the remarks appearing on p.20 5<sup>th</sup> paragraph of the response submitted January 25, 2007 erroneously indicated that the claims had been "cancelled" rather than "withdrawn". Claims 1-13, 22-24, 26-28, 30, 32, 34, 36, 42 and 50-56 are to be considered as being withdrawn.

### **B. Response to the Double Patenting Objection**

In the Office Action, the Examiner has rejected claims 14, 25, 29, 31, 33, 35, 37 and 43 under the grounds of non-statutory obviousness-type double patenting over claims 1, 3-4, 11, 13-14, 20 and 22-23 of co-pending U.S. Patent Application No. 10/667,641.

Given that this is a provisional obviousness-type double patenting rejection, the Applicant respectfully submits that a terminal disclaimer in accordance with 37 CFR §1.321(c) will be considered at a later date, if still required once claims have been found allowable over the prior art references cited by the Examiner. Response to the

#### Rejections under 35 USC §102 and §103

On page 10 of the Office Action, claims 14-21, 25, 29, 31, 33, 37, 39, 41 and 43-45 are rejected under 35 USC §102(e) as being anticipated by U.S. Patent Publication 2004/02454410 (hereafter to be referred to as Kisak, et al.) and claims 35, 38 and 40 under 35 USC §103(a) are rejected therefrom.

In response to the rejections, submitted herewith is an executed 37 C.F.R. 1.131 Affidavit, signed by Oleh SZKLAR, an inventor of the present application, establishing that the inventors had possession of the claimed subject matter, prior to May 22, 2003, the effective date of the Kisak et al. reference. The Affidavit further establishes that the conception was followed by due diligence until the filing of the application on October 22, 2003. Accordingly, the Applicants respectfully submit that Kisak et al. is not citable against the claims of the present application.

Given that Kisak et al. is no longer citable, the Applicant respectfully submits that both the §102(e) and §103(a) rejections fall.

In any event, the Affidavit (Declaration) raises new issues that would bar a final first Action.

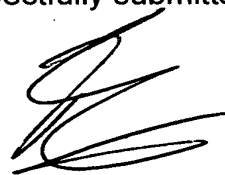
### III. CONCLUSION

In view of the above, it is respectfully submitted that claims 14-21, 25, 29, 31, 33, 35, 37-41 and 43-49 are in condition for allowance over Kisak et al. Reconsideration of the rejections and objections is requested. Allowance of all of claims 14-21, 25, 29, 31, 33, 35, 37-41 and 43-49 at an early date is solicited.

If the claims of the application are not considered to be in full condition for allowance, for any reason, the Applicant respectfully requests the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims or in making constructive suggestions so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,

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